

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

CARMEN BAEZ, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF ISRAEL
ANDINO,

REPLY DECLARATION

Plaintiffs,

6:13-cv-06625-CJS-JWF

v.

THE CITY OF ROCHESTER, NEW YORK AND
THE CITY OF ROCHESTER POLICE DEPARTMENT,

Defendants.

SPENCER L. ASH, ESQ., an attorney duly admitted to practice before the courts of the State of New York, hereby makes the following statements under penalty of perjury:

1. I am a municipal attorney for the City of Rochester, and, as such, am fully familiar with the facts and circumstances surrounding this case.

2. I submit this Reply Declaration in support of the City of Rochester's (hereinafter referred to as "Defendant") Motion, pursuant FRCP Rule 56, for an Order granting Defendants' Motion for Summary Judgment in its entirety as to all causes of action in this matter.

1. Luis Fuentes provided an Affidavit dated 12/2/15, in which he states that Israel Andino, the decedent, did not have a shotgun at the time he was killed.
2. Mr. Fuentes never attested to the actually seeing the shooting take place.
3. Moreover, Mr. Fuentes does not state that there was no shotgun on the scene, or that the decedent did not possess a weapon prior to the shooting. He simply claims he did not see a shotgun in the decedent's hands.
4. Furthermore, it is unclear from his Affidavit where Fuentes was located during the incident, at what point he arrived on the scene, and whether he had an unobstructed vantage point—as he states there were more than 100 people on the streets at the time of the shooting—including police who set up a perimeter.
5. His lack of detail regarding the incident, coupled with his closeness to the grieving Plaintiff, whom he refers to as a “mother”, makes his Affidavit unreliable and insufficient to raise genuine issues of material fact.

**BRIAN F. CURRAN
CORPORATION COUNSEL**

s/Spencer L. Ash

Dated: March 17, 2016
Rochester, New York

Spencer L. Ash, Esq. *Of Counsel*
Attorneys for Defendants
Office and Post Office Address
City Hall Room 400A, 30 Church Street
Rochester, NY 14614-1295
Telephone: (585) 428-6699
ashs@cityofrochester.gov

Mitchell A. Chait, Esq.
Attorneys for the Plaintiffs
One East Main Street, Suite 440
Rochester, New York 14614
Telephone: (585) 325-3545